

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

April 2, 1997

**NOTICE**

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 96-0111**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**DOVER LAKE VIEW ESTATES LLC,  
a Wisconsin limited liability company,**

**Plaintiff-Appellant,**

**v.**

**TOWN OF DOVER, a Wisconsin municipal  
corporation,**

**Defendant-Respondent.**

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APPEAL from an order of the circuit court for Racine County: DENNIS FLYNN, Judge. *Affirmed.*

Before Snyder, P.J., Brown and Anderson, JJ.

PER CURIAM. Dover Lake View Estates LLC (Lake View) has appealed from an order denying its petition for a writ of certiorari challenging the Town of Dover's

rejection of a proposed final plat for a real estate subdivision. We affirm the trial court's order.

The parties raise and argue numerous issues, all related to the issue of whether the Town exceeded its authority when it rejected the final plat. A person aggrieved by a municipality's failure to approve a plat may appeal to the circuit court pursuant to § 236.13(5), STATS. See *Busse v. City of Madison*, 177 Wis.2d 808, 811, 503 N.W.2d 340, 341 (Ct. App. 1993). The standard of review is whether the action of the approving authority was arbitrary, unreasonable or discriminatory. See *id.* at 812, 503 N.W.2d at 342; § 236.13(5).

Local units of government have no discretion to reject proposed plats under § 236.13, STATS., unless the plat conflicts with an existing statutory requirement of ch. 236, STATS., or with an existing written ordinance, master plan, official map or rule as provided by § 236.13(1)(a) through (e). See *State ex rel. Columbia Corp. v. Town Bd.*, 92 Wis.2d 767, 779, 286 N.W.2d 130, 136 (Ct. App. 1979). Whether the town exceeded its authority when it rejected the final plat is a question of law which we review de novo. See *Pederson v. Town Board*, 191 Wis.2d 663, 669, 530 N.W.2d 427, 430 (Ct. App. 1995). However, if one of the town's reasons for rejecting the plat is adequate, we need not consider whether the other reasons are valid. See *Busse*, 177 Wis.2d at 813, 503 N.W.2d at 342.

One of the reasons given by the Town for rejecting Lake View's final plat was that when the preliminary plat was approved, there was no mention of phased development. The Town noted that when approval of the final plat was requested, the project was presented as a phased development. The Town indicated that it was not

persuaded that a phased development was necessary, and objected that no timetable for phasing the development had been presented.<sup>1</sup>

We conclude that the Town properly rejected the final plat on this ground. A final plat is entitled to approval if, among other things, it conforms substantially to the preliminary plat as approved, including any conditions of that approval, and to local plans and ordinances. *See* § 236.11(1)(b), STATS. In this case, when the Town approved the preliminary plat, Lake View did not represent that the development would be phased. In effect, the Town approved the preliminary plat as a singular development. The final plat, in contrast, constitutes a phased development, which was never approved by the Town. Thus, the final plat did not substantially conform to the preliminary plat as approved, and the Town was not required to approve it under § 236.11(1)(b).

Lake View contends that because the final plat did not specify on its face that it was a phased development and because a visual comparison of the two plats reveals no differences, the Town had to approve the final plat under § 236.11(1)(b), STATS. It also argues that a plat is simply a map, and nothing in ch. 236, STATS., or the town ordinances requires that a plat reveal whether it is a phased development.

These arguments fail because at the April 26, 1995 meeting, Lake View represented to the Town that the development would be phased. Regardless of whether that fact was depicted on the final plat, the Town was entitled to conclude that it was inconsistent

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<sup>1</sup> Lake View objects to the Town's reference to a transcript of the April 26, 1995, town board meeting at which the Town considered Lake View's request for approval of the final plat and phased development was discussed. While Lake View complains that the transcript is missing portions and does not identify the speakers, it is clear from the transcript that Lake View representatives indicated at the meeting that the project would be a phased development. This transcript was part of the record transmitted to the trial court and therefore may be considered by this court. *See* RULE 809.15(1)(a)10, STATS. Moreover, Lake View does not contest this court's consideration of the minutes of this meeting, and the minutes themselves set forth a board member's statement that the project was coming before the board as a phased development, even though there had been no mention of phase development when the preliminary plat was approved.

with the preliminary plat as approved by it. The preliminary plat showed the entire subdivision. Because Lake View never represented to the Town when seeking approval of the preliminary plat that it intended to develop the subdivision in separate phases, what the Town approved was the development of the entire subdivision as a single development project.

With phased development, questions arise as to whether or when the entire subdivision will be completed, and the impact of developing in parcels. These were not concerns that existed under the preliminary plat as presented and approved. The Town therefore acted reasonably in concluding that the final plat did not substantially conform to the preliminary plat as approved by it, and rejected the final plat.

In its brief, Lake View also argues that the real reason that the final plat was denied was because of political opposition. As with the other reasons provided by the Town for its decision, whether this claim is valid is irrelevant because a proper basis existed for rejection of the plat. *See Busse*, 177 Wis.2d at 813, 503 N.W.2d at 342.

*By the Court.*—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

